

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Terry Kalil,

Complainant,

vs.

**ORDER DENYING PETITION  
FOR RECONSIDERATION**

Larry A. Knutson,

Respondent.

The above-entitled matter came on for a probable cause hearing as provided by Minn. Stat. § 211B.34, before Administrative Law Judge Kathleen D. Sheehy on August 27, 2004. The probable cause hearing was held to consider a complaint filed by Terry Kalil ("the Complainant") on August 25, 2004, alleging violations by Larry Knutson ("the Respondent") of Minn. Stat. § 211B.04, governing disclaimers on campaign literature, and Minn. Stat. § 211B.13, governing bribery related to throwing candy at local parades.

On August 31, 2004, ALJ Sheehy issued an Order finding probable cause to believe that the Respondent violated the disclaimer requirements of Minn. Stat. § 211B.04, and dismissing the allegation related to Minn. Stat. § 211B.13 for lack of probable cause. On September 1, 2004, the Complainant submitted a petition for reconsideration of ALJ Sheehy's decision, pursuant to Minn. Stat. § 211B.34, subd. 3.

Based on the record herein, and for the reasons stated in the following Memorandum, the Chief Administrative Law Judge makes the following:

**ORDER**

IT IS HEREBY ORDERED:

1. That Complainant's Petition for Reconsideration is DENIED.
2. That this matter is scheduled for an evidentiary hearing to be conducted by a panel of three Administrative Law Judges and to be held on September 7, 2004. Pursuant to an agreement of the parties, the panel will make its decision based on the record created at the probable cause hearing. Mr. Knutson may have until 9:00 a.m. on September 7, 2004 to respond to the material the Complainant has filed with this office since the close of the probable cause hearing.

Dated: September 2, 2004

/s/ Raymond R. Krause  
RAYMOND R. KRAUSE  
Chief Administrative Law Judge

## MEMORANDUM

On August 31, 2004 the Administrative Law Judge issued an Order finding probable cause to believe that Larry A. Knutson violated the disclosure requirements of Minn. Stat. § 211B.04, and dismissing for lack of probable cause the allegation that Mr. Knutson violated Minn. Stat. § 211B.13, governing bribery. On September 1, 2004, complainant Terry A. Kalil requested reconsideration of the August 31, 2004, Order as it relates to the dismissal of the second allegation. Minn. Stat. Sect. 211B.34 subd.3(b) provides that the Chief Administrative Law Judge must review a petition for reconsideration within three business days and determine whether the assigned administrative law judge made a “clear error of law”.

Minn. Stat. § 211B.13, subd.1, defines bribery in relevant part as follows:

A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election ...

The record established that in August 2004, Mr. Knutson, his wife, daughter, and several grandchildren participated in two parades. One parade was held in Frazee, Minnesota and the other was held in Wolf Lake. At each parade, the Knutson family rode in a pickup truck that was identified with Mr. Knutson's name and the office he seeks, and threw candy along the parade route. The issue presented in this case is whether the tossing of “penny candy” to the crowds along the parade routes is conduct amounting to bribery and prohibited under Minn. Stat. § 211B.13.

It is a question of fact whether a thing given by a candidate is an object of value and violative of the Act.<sup>[1]</sup> An assessment of the monetary worth of an item should be made from the perspective of a voter receiving the item, not the person offering it.<sup>[2]</sup> The burden of proving the allegations contained in the complaint is on the Complainant.<sup>[3]</sup> Here, the Complainant needed to establish that there was probable cause to believe that the candy tossed by Mr. Knutson's family had monetary value to a voter and that it was tossed in order to induce a voter to vote in a particular way.<sup>[4]</sup>

Mr. Knutson testified at the probable cause hearing that the candy thrown at the parades was intended for children. In addition, his was not the only candy tossed; most participants in the parade did the same thing. Assuming that persons in the crowd could actually identify Mr. Knutson's candy as coming from him, the Complainant did not establish what monetary value, if any, the candy might have to a voter or how anyone might reasonably conclude on this record that Mr. Knutson's family tossed this candy for the purpose of inducing the children's parents to vote for him.

The Administrative Law Judge found that the candy was not a thing of monetary value and tossing the candy in a parade is not the type of conduct the legislature meant to prohibit by this statute, and she dismissed the allegation for lack of probable cause.

Upon reconsideration, the Chief ALJ concludes that the probable cause order should be affirmed for the reasons stated.

In addition, the statute must be read with a degree of common sense if it is to prove workable in today's political climate. Complainant argues that penny candy has monetary value and its monetary value is expressed directly by the name given it, i.e. "penny " candy. According to Complainant, the statute should be interpreted strictly and as an absolute. Yet, if the statute were to be read as strictly as the Complainant demands, candidates could be prohibited from appearing in parades at all, since most people attend parades for entertainment value, and the statute expressly prohibits the giving of entertainment. This type of literal reading renders ridiculous the hard fought compromise legislative language that was intended to address corruption in the election process. Such a reading is not necessary or prudent. While the statute provides no de minimus language *per se*, a common sense reading of the statute, in light of its intent, allows for such an obvious exception as presented here.

The order dismissing the allegation related to the bribery provision was not erroneous. The petition for reconsideration is denied.

R.R.K.

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<sup>[1]</sup> See, Op. Atty. Gen. 627 F-1, March 7, 1950.

<sup>[2]</sup> *Cf. United States v. Garcia*, 719 F.2d 99, 102 (5<sup>th</sup> Cir. 1983) (discussing 42 USC § 1973i(c)'s prohibition against paying for votes).

<sup>[3]</sup> Minn. Stat. § 211B.32, subd. 4.

<sup>[4]</sup> Minn. Stat. § 211B.13, subd. 1.